IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition (L) No.2796 of 2006

Naresh Lalchand Bhagchandani
aged about 46 years, occ business
residing at flat no.302/303
B Accord 2nd cross Lane,
Lokhandwala Complex Swami
Samarth Nagar Andheri West
Mumbai 400058 .. Petitioner

vs

1. Union of India
   Under Secretary, PVI
   Ministry of External Affairs
   Patiala House Annexe
   Tilak Marg, New Delhi

2. The Regional Passport Office
   Centre 216 A Dr A B Road,
   Passport office Manish Commercial
   Worli
   Mumbai 400025

3. The Public Relations Officer(Policy)
   Regional Passport Office
   Manish Commercial
   Dr A.B. Road, Worli
   Mumbai 400025

4. The State of Maharashtra
   Mumbai . ..Respondents

Ms Madhavi Tavnandi for the petitioner
Mr Pankaj Kapoor for respondent No.2
Mr. K.R. Belosey Offg G P for the respondent No.4.

CORAM: SWATANTER KUMAR,C.J.,&
S.C.DHARMADHIKARI, J.

JUDGMENT RESERVED ON 9.4.2007.
JUDGMENT DELIVERED ON 19.4.2007

JUDGMENT (SWATANTER KUMAR,C.J):-

Heard the learned counsel for the parties.

1. The petitioner, an Indian citizen, residing at Lokhandwala Complex, Swami Samarth Nagar, Andheri(West) Mumbai 400058, has approached this court under Article 226 of the Constitution of India, praying that the action of the respondents in withholding his passport No E-5934818 issued on 24.6.2003 and valid upto 26.6.2013, is arbitrary, contrary to law and is prejudicial to the interest of the petitioner.

2. The petitioner claims that he is involved in export of garments and is a frequent flier to Dubai-Europe and other parts of the world and carries on business in the name and style of Sushilas at Linking Road, Bandra, Mumbai. The petitioner lost his earlier passport being No.484378 dated 22.3.1993 valid upto 21.3.2003. Upon acquiring knowledge of lost of his passport, the petitioner registered a complaint at Khar police station in

this regard. The first information report bearing No.632102 dated 11.3.2002 was registered with the said police station. Thereafter the petitioner applied for fresh passport giving complete details of previous passport issued to him.

3. Respondent no. 3 informed the petitioner that they had received information from external affair ministry that his previous passport was deliberately lost so that someone else can unauthorisedly take benefit or use the said passport. The said passport of the petitioner was thus withheld nearly for a period of 2 years. The petitioner aggrieved by this action raised protest by writing letters and by making representations to the authorities. The said passport was again returned to him in August 2006 with endorsement on 18.3.2005. Again on 29.12.2005 the petitioner received a letter from respondent no.3 asking him to supply the copy of FIR lodged by him at the police station, which the petitioner supplied to them without any delay. Copy of the said letter annexed to the petition as Exhibit C. The status report in furtherance to the FIR was also submitted by the petitioner on 1.5.206 as given by the concerned police station which is at Exhibit D to the petition.

Vide letter dated 28.8.2006, respondent no. 3 called upon the petitioner to deposit his passport in compliance with the provisions of section 10(1) of the Passport Act, 1967 (hereinafter referred to as the Act). In response to the said letter Exhibit F, the petitioner on 7.9.2006 surrendered his passport as directed. The passport was not returned to the petitioner in spite of his repeated requests. Respondent No. 3 vide letter dated 22.9.2006 informed the petitioner that his request for return of passport cannot be accepted, inasmuch as the case in relation to the FIR 209 of 2002 was pending in court. The relevant portion of the said letter Exhibit H to the petition reads as under:

> "Please refer to your application dated 9.3.2005 and your letter dated 7.9.2006 for grant of ECNR service on your passport No. E 934818 dated 24.6.2003.
>
> It is informed to our Ministry by the Dy Commissioner of Police IGI Airport New Delhi regarding not to grant service to you as the case is

under trial in the court of ACMM, Patiala House, New Delhi in FIR No.209/2002".

Even thereafter the petitioner made various attempts to resolve this issue but his request to the department for return of passport were of no consequence, resulting in filing of the present petition.

4. According to the petitioner, the action of the respondents is violative of section 10(1) of the Act as well as infringes the freedom available to the petitioner under Articles 19(1) and 21 of the Constitution of India. The direction for forfeiting his passport is illegal, and is even against the principles of justice, equity and good conscience. In fact according to the petitioner, respondents have not given reasons much less sufficient cause to retain his passport.

5. The respondents filed their short reply justifying their action opposing grant of relief prayed for by the petitioner. According to them the passport of the petitioner has been retained lawfully and in accordance with law. The claim of right

is denied on the ground of reasonable restrictions and it is stated that after the fresh passport was issued to the petitioner, proceedings under sections 419, 420, 460 and 471 of IPC on the basis of the FIR No. 209 of 2002 were taken and resultantly no passport would be was issued thereafter to the petitioner. The recommendatory committee recommended that the passport be not issued to the petitioner and if the passport was released there is likelihood of the petitioner avoiding the process of law. It is admitted that in the application filed for issuance of fresh passport on 29th April 2003 the petitioner had mentioned about the petitioner's loss of earlier passport.

6. No doubt a discretion is vested with the passport authority in terms of section 10 to impound and/or return of passport or travel documents of a person. It could also ask the holder of the passport to deliver the passport and travel documents after serving upon him a notice as required under the provisions of section 10(1) of the Act. The power of cancelling and impounding of the passport are also vested, if the holder of the passport was covered under the provisions of section 10(3) of the Act. It is significant to note at this stage that

the power vested in the passport authority under section 10(1) of the Act, has to be exercised while keeping the due regard to the provisions of section 6(1) of the Act. In terms of section 6(1) above, the government could refuse to make endorsement for visit by a person to foreign country or issue travel documents for the reasons which are stated under that section. Under section 6(2) of the Act, the authority could also refuse to issue passport again for the reasons stated under that provision. This provision of law clearly indicate that the discretion of wide magnitude is vested in the authority, but such power and discretion has to be exercised in accordance with the settled norms and accepted judicial pronouncement. Any arbitrary exercise of power would call for judicial intervention and right of the passport holder or applicant would have to be protected by the court in consonance with the constitutional mandate contained in Article 19 with regard to the freedom of movement. Primarily the law relating to passport is regulatory law and contemplates different kinds of situations,which have to be dealt with by the authorities in accordance with the provisions of the Act. Of course section 12 of the Act provides for offence and penalties for contravention of certain specific provisions but the prime

object of the Act is to regulate issuance of passport, permission to travel abroad and revocation and cancellation of passport.

7. The provisions which empowered the authorities to take action, as contemplated under section 6 or 10 of the Act, are required to be strictly construed before any action is taken against a passport holder; his acts of omission or violation should essentially fall within the contemplation of the provisions on their strict construction. At this stage we may refer to a judgment of the Punjab and Haryana High Court in the case of Rajinder Kaur and anr vs. Union of India and ors, reported in AIR 2004 Punjab and Haryana 347 wherein a passport was sought to be denied on the ground of vague allegations that there was likelihood of the applicant involving in the activities prejudicial to the sovereignty of the State. The court after discussing the judgments of the Supreme Court has held as under:

> "8. In the case of Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, New Delhi, AIR 1967 SC 1836 the Supreme Court expanded the scope of freedom to travel and equated the same to a fundamental right and a constitutional protection available, to the citizens of this country. This expansion of right of freedom has been reiterated with approval in various

subsequent judgments. The Supreme Court also emphasised that every executive action which is or which may or is likely to operate prejudicial to the Interests of any person must be supported by legislative authority. In the case of Smt. Maneka Gandhi v. Union of India, AIR 1978 SC 597 the Court held that a person cannot be deprived of his right to go abroad. There was a specific law enacted by the State in that regard. This being the settled law, obvious result is that the competent authority must have material to substantiate this objection on the basis of the record maintained by it in support of the objection for Issuance of the passport. Further more, the Parliament having enacted a law specifying the grounds on the basis of which the authorities have wide power for refusing to issue a passport or travel document of the one hand and even right has been given to the said authorities to Impound or caused to be Impound or revoke the passport or travel document. But, once the grounds have been specified, then the authorities are obliged to bring their case within those grounds and cannot be permitted to add any ground to the specified ground or to forward an interpretation which, in substance, would tantamount to introduce a new ground which apparently is beyond the purview of the existing provisions. The authorities must deal with facts of the case and raise record based objections. The authorities, thus. must apply their mind in light of the grounds existing under Section 6 (2) of the Act before they decline to issue passport to the petitioners. Interdepartmental proceedings should be taken in a responsible manner so that constitutional protected right of a person is not infringed by an arbitrary action. The satisfaction to be recorded by the police department and/or even the passport authorities should be founded on some reasonable and cogent material. In the case of Manjit Singh v. Union of India, CWP No. 4073 of 2003, decided-on 20-5-2004. the Court held as under :-

".....Such a discretion must be exercised in consonance with the provisions of the Passport Act, 1967. They owe an obligation to the public at large to discharge their duties in terms of the provisions of the said Act in accordance with law and fairly. No justifiable reason can be given why an application should be kept pending for years together. If the competent authority is of the view that in consonance with the provisions , of the Act, passport should be declined to an applicant he is bound by law to pass such an order and communicate the same to the person concerned while adhering to the principle of Audi Alteram Partem wherever necessary. To grant or refuse to grant is the discretion of the authority to be exercised in consonance with the settled principles of law but to keep the matter in abeyance would be an act which Is bound to invite judicial castism on all quarters. The authorities are duty bound to apply their mind to the facts and circumstances of each case and take decision promptly without any unnecessary delay. In the case of Ranjit Bajaj (supra) the Court held as under :-

"However, we must also notice a pertinent aspect relatable to such cases. The authorities have a duty to strike a balance between the restricted freedom available to the petitioner to travel abroad and the nature and grievousness of the crime committed by him. The development of law, which is its basic and essential feature, has given wide magnitude to the expression of freedom. Enlargement of the concept of-freedom by judicial pronouncement has an inbuilt effect of requiring the authorities to examine the matter with a greater caution and care rather than mechanically reject request for issuance of passport. To illustrate this view we may refer to a case where a person may be involved in a minor offence of traffic regulations and claims to be tried In the Court rather than paying fine at the spot, A case against him being registered under Section 11 read with. Section 183 of the Motor Vehicles Act, 1988 and even Section 323 of the Indian Penal Code simpliciter and challan presented in Court, should such person be denied issuance of a passport merely because there is a case pending against him in the criminal Court, will be a matter of serious concern for the passport authorities. In such cases. It will be expected of the passport authorities to consider the application

for renewal/issuance of a passport objectively and in consultation with the police authorities so as to prevent injustice being done to an applicant. Default in such objectivity Is in all probabilities likely to result in Infringement of a fundamental protection and liberty granted to the applicant under the law of the land. The purpose for which the petitioner had prayed for Issuance of the passport has lost its significance as the event at Bangkok itself is over."

Reverting back to the facts of the present case there is no denying the fact that when the police verification report was sent by respondent No. 3 to respondent No. 2, the petitioner was not undergoing any sentence or conviction. In fact he had been released on probation by the Court of competent jurisdiction. The period of bond had already expired In the year 2000. The report submitted by respondent No. 3 cannot be justified. In fact the same is an unfair exercise of power. Keeping the application of the petitioner in abeyance by respondent No. 2 is again not permissible on any ground as is clear from the records provided before us. The police authorities have acted unfairly and error has been personified by inaction on the part of respondent."

"..... .The authorities must advert themselves also to the fact that the police should apply Its mind and make correct reports to the passport authority on the record available with the department. The applications should be processed properly and final orders granting the passport or declining the request for issuance of the passport upon due application of mind should be passed by the passport authorities. Orders so passed, essentially must be conveyed to the applicant. Such directions and or instructions must be issued by the concerned authorities at the earliest."

9. We have already noticed that according to the contentions raised on behalf of the respondents before us, the passports cannot be Issued to the petitioners In light of the provisions contained In Section 6 (2)(b) of the Act. Under Section 6 (2)(b) of the Act it is stated that the passport authority shall refuse to issue a passport on the grounds that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India. A person can be denied the right to travel abroad if the authorities are satisfied that ingredients of this provision are satisfied.

> The language of the section indicates the gravity of the involvement or likely involvement of an applicant in activities which would be prejudicial to the sovereignty and integrity of the country. These provisions, thus, must receive a strict construction as their consequences in law are not only serious but have the effect of taking away freedom granted to the petitioners in law. Before It could be stated that a person is Involved in activities which are prejudicial to the sovereignty of the country, there must be some reasonable and cogent material in possession of the respondents to show involvement of the petitioners in such activities. The expression, "likely to" cannot be treated so lightly as to include every activity and relationship to be prejudicial to the sovereignty of the State.
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> 10. Likelihood may take in its scope the apprehension which essentially must be record based or founded on a reasonable cause, of course, may not be directly substantiated by written documentation. Surveillance, maintenance of appropriate registers under the Police Rules, entry of the name of the person therein and at least some reasonable analytical examination by the concerned quarters in the Union of India would normally be the records which should substantiate such reasonable apprehension".

8. Very relevant observations were also made by the same court in the case of Ranjit Bajaj vs Regional Passport Authority, Chandigarh (Civil Writ Petition No.3897 of 2004. While emphasising the need for drawing balance between the restricted freedom and nature of the offence, alleged to have been committed by the authority while considering such an application, the Court has held as under:

“In the case of Maneka Gandhi (supra) their Lordships in no uncertain terms held that the expression “personal liberty” in Article 21 must be so interpreted as to avoid overlapping between that Article and Article 19(1). The expression is of widest amplitude and it covers a variety of rights which go t constitute the personal liberty of man and some such freedom has been raised to the level of fundamental right. While holding that to travel abroad was a fundamental protection available to a person, their Lordships duly accepted the applicability of principle of reasonableness in placing certain restriction under the due process of law including section 10(3)(c) of the Act. Of course, it was subjected to the basic rule of law of Audi Alteram Partem.

The basic enunciated principles in afore-referred cases describe a common dictum that freedom to travel abroad is a fundamental protection or right available to a person under the expanded meaning under Article 21 read with Article 19 of

the Constitution. The grant of such right is certainly subject to restrictions placed by due process of law. The Passports Act defines a process of law by which the restriction could be placed upon leave to a person to travel abroad and claim protection on the terms and conditions of the passport issued in the name of the Constitution of India. Issuance of a passport is intended to provide harmony and amicability of international relations.

Clause (f) of sub-section (2) of section 6 of the Act empowers the Passport Authority to refuse to issue a passport or travel documents for going abroad. In the event the proceedings in respect of an offence alleged to have been committed by the applicant are; pending before a criminal court in India. This provision does not offend the constitutional mandate in any way. It also does not vest the authorities with arbitrary power. Pendency of a case before the criminal court, seen in the light of police report, would be a

> sufficient ground for the authorities to act and in its wisdom even decline issuance of the passport. Exercise of such jurisdiction would hardly be open to judicial review unless such decision was palpably erroneous or was offending the basic rule of law. If the element of arbitrariness ex-facie vitiates the order, then alone it may be a case of interference by the court in exercise of its writ jurisdiction".

9. The above enunciated principle clearly show that there has to be fairness in the action of the Passport authority and the orders denying the passport have to be for just, proper reasons and such reasons essentially should fall within the ambit and scope of the corresponding provisions of the Act. The case of the respondents as aforementioned indicates that the petitioner could not be returned the passport as his previous passport was misutilised by one Yashwant Natwar Patel, against whom a case was pending. Further he had made misrepresentation in his application that the case had been closed. Both these grounds are not supported by the documents

produced before the court by respondent no. 6. Exhibit E to the reply affidavit filed by the respondents, is a letter written to the Ministry External Affairs by the Dy Commissioner of Police IGI Airport, New Delhi, wherein he referred to the provisions of section 6(2) indicating that the proceedings in respect of offence alleged to have been committed by the applicant are pending before a criminal court in India, and therefore, the passport facility may not be granted. In the same letter it was also stated that the petitioner had made a wrong representation in his letter dated 2.5.2006 that the police had closed the case in respect of FIR No.209 of 2002. It is this letter, which appears to be the basis for denial of return of the passport to the petitioner. This suffers from factual errors inasmuch as on 13.3.2007 the SHO /IGI Airport P.S. New Delhi one Dharam Vir Joshi had given a status report to be filed in Writ Petition (L) No. 2796 of 2006, stated to be pending in the High Court and in that letter it was specifically recorded as under:

> "---Though police file of the case could not be traced due to shortage of time and so investigation as the status of real P.P holder Naresh Lal Chand Bhagchandani could not be ascertained. But as

per judicial file the court of A.C.M.M. has passed the following order and consigned the case file to record room on dated 22.1.2005 “Accused is P.O. No witness is present today. File be consigned to record room with direction to preserve the case file with liberty to prosecution to get the case revived on the arrest of the accused. The passport and travelling ticket be cancelled”.

10 We are also unable to understand and the learned counsel for the respondents have failed to bring any documents to our notice to show that any criminal case is pending against the petitioner. The only accused in the FIR 209 of 2002 was Yashwant Natwar Patel and the petitioner was neither an accused nor even referred to in the column no.2 of the FIR by the investigating agency. Further more that case even has been closed against the accused. The petitioner has been requesting the respondents to return his passport as it was causing serious prejudice to his liberty, right to travel to abroad as well as to carry on his business. It is also not in dispute that the petitioner had lodged FIR on 11.3.2002 about the loss of his passport and

it is nobody's case that the said FIR was intentional and with ulterior motive was got recorded by the said petitioner. The action of detention of the passport thus does not fall within the para-meters of section 10 of the Act. It is expected of the respondents to act judiciously when it passes orders or take action, which would directly impinge upon the right of even restricted freedom available to a citizen of this country under our Constitutional mandate. The authorities are expected not to act at their whim and fancies and even speak contrary to their own record. We have no doubt in our mind that the petitioner has been forced to approach the court and litigate for all this time without any justifiable reasons.

For the reasons aforestated we find that the action of the respondents in not returning the passport of the petitioner is without any plausible cause or justification. It is patently an act of arbitrariness, which we hereby quash and set aside and direct issue of mandamus to the respondents to return the passport of the petitioner forthwith. Petition is allowed with costs, quantified at Rs. 2500/-.

CHIEF JUSTICE

S.C.DHARMADHIKARI,J.